

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH GREGORY DUNBAR,

Plaintiff,

CASE NO.1:13CV1100

v.

HON. ROBERT J. JONKER

JOHN PRELESNIK, *et al.*,

Defendants.

/

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 23) and the Objections to the Magistrate Judge's Report and Recommendation (docket # 24). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on *de novo* reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). *De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed *de novo* the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself and the Objections filed. The Court finds the Magistrate Judge's Report and Recommendation (docket # 23) is factually sound and legally correct.

The Magistrate Judge recommends that defendants' motions to dismiss (docket nos. 10 and 13) be denied and plaintiff's motion for default judgment as to defendant Warden John Prelesnik (docket no. 16) and plaintiff's *ex parte* motion for preliminary injunction and TRO (docket no. 19) be denied. In his Objections, Plaintiff primarily reiterates and expands arguments made in the initial brief. The Report and Recommendation already carefully, thoroughly, and accurately addresses each of those arguments. Nothing in Plaintiff Objections adds to or otherwise changes the analysis.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 23) is approved and adopted as the opinion of the Court.

IT IS ORDERED that defendants' motions to dismiss (docket nos. 10 and 13) are **DENIED**.

IT IS FURTHER ORDERED that plaintiff's motion for default judgment as to defendant Warden John Prelesnik (docket no. 16) and plaintiff's *ex parte* motion for a preliminary injunction and TRO (docket no. 19) are **DENIED**.

/s/Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

Dated: September 11, 2014